IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 810 of 2002
in
SPECIAL CIVIL APPLICATIONNo 8913 of 2001
with
CIVIL APPLICATION NO. 7639 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

STATE OF GUJARAT
Versus
DEENANJI GIDHAJI THAKORE

Appearance:
1. LETTERS PATENT APPEAL No. 810 of 2002
MR VM PANCHOLI, AGP, for the Appellant.
MR JA ADESHRA for the Respondent.

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellant-State of Gujarat, by this Letters Patent Appeal, has challenged the judgment and order dated 9th April, 2002, passed by the learned Single Judge of this Court (Coram: D.H. Waghela, J.) in Special Civil Application No.8913 of 2001.

2. The respondent-workman was working in the Irrigation Department of the State of Gujarat as Chowkidar, on daily wage basis. His services were terminated on 15.2.1999, on the ground that no work was available. He, therefore, raised an industrial dispute which, ultimately, was referred to the Labour Court, Kalol, registered as Reference (LCK) No.330 of 1999. The Labour Court, by its award dated 15.9.2000, set aside the order of termination of the respondent-workman and ordered to reinstate the workman in service with all other benefits, except back wages.

2.1 The aforesaid award passed by the Labour Court was challenged by the appellant-State of Gujarat before this Court by way of Special Civil Application No.8913 of 2001. Before the learned Single Judge of this Court, a specific contention was raised that the workman was working in the Irrigation Department of the State of Gujarat, which is not an "industry", therefore, the Labour Court had no jurisdiction to entertain the Reference and pass award in favour of the respondent-workman. In support of the said contention, reliance was placed on the judgment of the Honourable Supreme Court in the case of Executive Engineer (State of Karnataka) v. K. Somasetty & Ors., reported in (1997) 5 SCC 434. However, the learned Single Judge of this Court, in absence of any such contention raised before the Labour Court, refused to consider the same for the first time in his writ jurisdiction and dismissed the writ petition. This has been challenged in this Letters Patent Appeal by the appellant-State of Gujarat.

3. Learned Assistant Government Pleader, Shri Pancholi, appearing for the appellant-State of Gujarat, vehemently, submitted that the learned Single Judge committed an error in rejecting the contention raised by the appellant before him that the Irrigation Department of the State is not an "Industry", therefore, the Labour Court had no jurisdiction to entertain the Reference and pass the award. He submitted that when a neat question of jurisdiction was raised before the learned Single Judge of this Court in the writ petition, then, he should

have permitted the appellant-State to raise it and decided the same in accordance with law. He submitted that the Honourable Supreme Court in case of K. Somasetty (supra), has held that Irrigation Department of the State Government cannot be said to be an "Indusry". He further submitted that, relying on the judgment of the Hon'ble Supreme Court in K. Somasetty's case (supra), Division Bench of this Court in case of Shankerji Chelaji Thakor v. State of Gujarat, 2000(1) GLH 482, also held that the Irrigation Department of the State Government is not an "Industry". He, therefore, submitted that this appeal be allowed and the order passed by the learned Single Judge dismissing the writ petition, i.e. Special Civil Application No.8913 of 2001, be quashed and set aside and the writ petition filed by the appellat-State be accepted and the impugned award passed by the Labour Court be quashed and set aside.

4. Learned counsel, Shri Adeshra, appearing for the respondent-workman, however, raised a preliminary objection regarding the maintainability of this Letters Patent Appeal. He submitted that the impugned award passed by the Labour Court was challenged by the appellant-State of Gujarat before this Court under Article 227 of the Constitution and the learned Single Judge of this Court, in exercise of his powers under Article 227, refused to interfere with the award and dismissed the petition. Therefore, Letters Patent Appeal would not be maintainable. As against that, learned Assistant Government Pleader, Shri Pancholi, submitted that the appellant-State of Gujarat had filed writ petition not only under Article 227 of the Constitution, but it was filed also under Article 226 and in such type of cases, where the petition was filed under Articles 226 and 227 of the Constitution, then Letters Patent Appeal would certainly be maintainable. n suppofrt of his contention, he has relied on the judgment of the Honourable Supreme Court in case of Lokmat Newspapers Pvt. Ltd. v. Shankarprasad,(1999)6 SCC 275. In that case, Honourable Supreme Court has observed that, it was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227. Once such a jurisdiction was invoked and when the writ petition was dismissed on merits, it cannot be said that the learned Single Judge has exercised his jurisdiction only under Article 227. The aforesaid conclusion was arrived at by the Honourable Supreme Court from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent.

4.1 In the instant case, from the relevant averments

made in the writ petition and the jurisdiction invoked by the appellant-original petitioner, it is clear that the learned Single Judge of this Court has exercised his jurisdiction under Article 226 and also under Article 227 of the Constitution. Thus, in our considered opinion, on facts of the present case, it is clear that in the instant case, Letters Patent Appeal is maintainable. Thus, the preliminary objection raised by learned counsel-Shri Adeshra is rejected.

5. Learned counsel, Shri Adeshra, then contended that the Honourable Supreme Court, while deciding the case of K. Somasetty (supra) had not considered its earlier judgment in the case of Des Raj v. State of Punjab, reported in AIR 1988 SC 1182. He submitted that, if the previous judgment of the Honourable Supreme Court was cited and considered in the later judgment, then, the subsequent Bench of the Honourable Supreme Court might not have taken the view that Irrigation department of the State is not an "Industry". He also submitted that, recently, a learned Single Judge of this Court has referred one matter to the Division Bench in view of the aforesaid conflicting judgments of the Honourable Supreme Court reported in AIR 1988 SC 1182 and (1997) 5 SCC 434.

6. Shri Pancholi, learned Assistant Government Pleader for the appellant, firstly, submitted that without placing any such order on record, learned counsel Shri Adeshra should not have made such submission. He, then submitted that even if such reference is made, then also in view of Full Bench judgment of this Court in case of Prakashkumar Prahladbhai Patel v. District Primary Education Officer, 2000(3) GLR 2467, reference, if any, made by the learned Single Judge of this Court, on this point, would become absolutely redundant and it should not deter this Court from deciding this appeal on the question of jurisdiction. Shri Pancholi further submitted that, in Des Raj's case (supra), the Supreme Court took a view that it was an "Industry". However, later on, in case of K. Somasetty (supra), the Honourable Supreme Court has clearly held that Irrigation Department of the State is not an "Industry". For taking that view, the Honourable Supreme Court has relied upon its previous two judgments - (1) Union of India v. Jai Narain Singh, 1995 Supp.(4) SCC 672 and (2) State of Himachal Pradesh v. Suresh Kumar Verma, (1996) 7 SCC 562. Thus, the Honourable Supreme Court, right from 1995, in as many as three judgments, took the consistent view that Irrigation Department of the State cannot be said to be an "Industry". He, therefore, submitted that, as laid down by the Honourable Supreme Court, this Court

has to follow later judgments of the Honourable Supreme Court.

6.1 We are in complete agreement with the submission made by learned Assistant Government Pleader, Shri Pancholi. After the judgment of the Honourable Supreme Court in Des Raj's case (supra), there are as many as three judgments of the Honourable Supreme Court and in all the three judgments, the Honourable Supreme Court has taken a consistent view that the Irrigation Department of the State Government is not an "Industry". This consistent view of the Honourable Supreme Court expressed since 1995 onwards was also follwed by the Division Bench of this Court in Shankerji Chelaji Thakor's case (supra), wherein it has been observed that: "The function of public welfare of the State is a soverign function. It is the constitutional mandate under the Directive Principles that the Government should bring about welfare State by all executives and legislative actions. Under these circumstances, the State is not an "indstry" under the Industrial Disputs Act. Even otherwise, since the project has been closed, the respondent has no right to the post since he had been appointed on daily wages".

7. In view of the above, when there are three later direct judgments of the Honourable Supreme Court on this point and when those judgments have been followed by Division Bench of this Court in 2001, then, we are of the considered opinion that the reference made by the learned Single Judge on this point should not come in our way in deciding the issue before us. We are not inclined to express any opinion on the reference made by the learned Single Judge of this Court, whether such reference is redundant or not in view of the Full Bench judgment of this Court in the case of Prakashkumar Prahladbhai Patel's case (supra), as submitted by learned Assistant Government Pleader, Shri Pancholi. As and when that matter comes up before the Court, the same will have to be decided in accordance with law.

7.1 However, when there are as many as three later judgments of the Honourable Supreme Court on this point, namely, that Irrigation Department of the State is not an "Industry", followed by the Division Bench of this Court in Shankerji Chelaji Thakore's case in 2001, then we have no option but to accept this Letters Patent Appeal, as the Irrigation Department of the State of Gujarat is not an "Industry". Thus, therefore, the Labour Court had no jurisdiction to entertain the Reference.

8. Before parting, we may only state hat without the

order of reference on hand, learned counsel should not have made submission that the learned Single Judge of this Court has made a reference on this point.

9. In view of the above discussion, the judgment order dated 9.4.2002 passed by the learned Single Judge of this Court, dismissing Special Civil Application No.8913 of 2001 is hereby quashed and set aside and the writ petition, i.e. Special Civil Application No.8913 of 2001 is accepted and the impugned judgment and award passed by the Labour Court on 15.9.2000 in Reference (LCK) No.330 of 1999, setting aside the dismissal order of the respondent-workman from service and reinstating him in service with continuity in service is hereby quashed and set aside on the ground that the Labour Court had no jurisdiction to entertain reference in case of a workman of the Irrigation Department of the State. Accordingly, Letters Patent Appeal is allowed with no order as to costs. Civil Application No.7639 of 2002 does not survive as the main appeal is dismissed. Hence, Rule issued on Civil Application stands discharged with no costs. .

10. At this stage, learned counsel, Shri Adeshra, for the respondent-workman submitted that he may be allowed to challenge the impugned order of dismissal before any other appropriate forum. For that, our permission is not necesssary, as without going into the merits of the case, only on the ground of jurisdiction, we have allowed this Letters Patent Appeal. The respondent-workman can always avail any other alternative remedy available to him under the law and challenge his order of dismissal before appropriate forum by way of appropriate proceedings.

[B.J. SHETHNA, J.]

[A. L. DAVE, J.]

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